

STEPHEN D. HANS & ASSOCIATES, P.C.  
45-18 Court Square, Suite 403  
Long Island City, New York 11101  
Tel: 718.275.6700  
Fax: 718.275.6704  
*Attorneys for the Defendants*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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LISSETTE BORJA,

Plaintiff,

**17-CV-3133**

-against-

**ANSWER**

J & M INDUSTRIES, INC., a/k/a/ J & M CONSTRUCTION  
MANAGEMENT INC., and JAMES FAUCI, individually,

Defendants.  
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**ANSWER**

The defendants J & M INDUSTRIES, INC., a/k/a/ J & M CONSTRUCTION MANAGEMENT INC., and JAMES FAUCI, individually, (hereinafter referred to as the “Defendants”), by and through their attorneys, STEPHEN D. HANS AND ASSOCIATES, P.C., as and for their Answer to the complaint dated and filed in this action on May 24, 2017 (the “Complaint”) by the plaintiff LISSETTE BORJA, (hereinafter referred to as the “Plaintiff”) respond and allege as follows:

**AS AND FOR AN ANSWER TO “PRELIMINARY STATEMENT”**

1. With respect to the allegations contained in Paragraph 1 of the Complaint, the Defendants admit that Plaintiff worked at the named defendant corporation but the Defendants deny all other allegations contained in such Paragraph.
2. With respect to the allegations contained in Paragraph 2 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

3. With respect to the allegations contained in Paragraph 3 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
4. With respect to the allegations contained in Paragraph 4 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
5. With respect to the allegations contained in Paragraph 5 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
6. With respect to the allegations contained in Paragraph 6 of the Complaint, the Defendants admit that Plaintiff is seeking damages, but Defendants deny the remainder of the allegations contained in such Paragraph.
7. With respect to the allegations contained in Paragraph 7 of the Complaint, the Defendants admit that Plaintiff is seeking damages, but Defendants deny the remainder of the allegations contained in such Paragraph.

**AS AND FOR AN ANSWER TO “JURISDICTION AND VENUE”**

8. With respect to the allegations contained in Paragraph 8 of the Complaint, the Defendants state that such allegations consist of statements and/or conclusions of law to which no responsive pleading is required.
9. With respect to the allegations contained in Paragraph 9 of the Complaint, the Defendants state that such allegations consist of statements and/or conclusions of law to which no responsive pleading is required.
10. With respect to the allegations contained in Paragraph 10 of the Complaint, the Defendants state that such allegations consist of statements and/or conclusions of law to which no responsive pleading is required.

**AS AND FOR AN ANSWER TO “TRIAL BY JURY”**

11. With respect to the allegations contained in Paragraph 11 of the Complaint, the Defendants state that such allegations consist of statements and/or conclusions of law to which no responsive pleading is required.

**AS AND FOR AN ANSWER TO “PARTIES”**

12. With respect to the allegations contained in Paragraph 12 of the Complaint, the Defendants deny having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in such Paragraph.
13. With respect to the allegations contained in Paragraph 13 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
14. With respect to the allegations contained in Paragraph 14 of the Complaint, the Defendants admit the allegations contained in such Paragraph.
15. With respect to the allegations contained in Paragraph 15 of the Complaint, the Defendants admit the allegations contained in such Paragraph.
16. With respect to the allegations contained in Paragraph 16 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

**AS AND FOR AN ANSWER TO “STATEMENT OF FACTS”**

17. With respect to the allegations contained in Paragraph 17 of the Complaint, the Defendants deny having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in such Paragraph.

18. With respect to the allegations contained in Paragraph 18 of the Complaint, the Defendants deny having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in such Paragraph.
19. With respect to the allegations contained in Paragraph 19 of the Complaint, the Defendants deny having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in such Paragraph.
20. With respect to the allegations contained in Paragraph 20 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
21. With respect to the allegations contained in Paragraph 21 of the Complaint, the Defendants deny having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in such Paragraph.
22. With respect to the allegations contained in Paragraph 20 of the Complaint, the Defendants deny the allegations contained in such Paragraph, except that Defendants admit Anthony Fauci handed out memoranda to the laborers.
23. With respect to the allegations contained in Paragraph 23 of the Complaint, the Defendants deny having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in such Paragraph.
24. With respect to the allegations contained in Paragraph 24 of the Complaint, the Defendants admit the allegations contained in such Paragraph, but deny that Plaintiff worked 40 to 50 hours per week and was hired as an Office Clerk.
25. With respect to the allegations contained in Paragraph 25 of the Complaint, the Defendants deny the allegations contained in such Paragraph, except that Defendants admit the Plaintiff served as a receptionist.

26. With respect to the allegations contained in Paragraph 26 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
27. With respect to the allegations contained in Paragraph 27 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
28. With respect to the allegations contained in Paragraph 28 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
29. With respect to the allegations contained in Paragraph 29 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
30. With respect to the allegations contained in Paragraph 30 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
31. With respect to the allegations contained in Paragraph 31 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
32. With respect to the allegations contained in Paragraph 32 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
33. With respect to the allegations contained in Paragraph 33 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
34. With respect to the allegations contained in Paragraph 34 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
35. With respect to the allegations contained in Paragraph 35 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
36. With respect to the allegations contained in Paragraph 36 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

37. With respect to the allegations contained in Paragraph 37 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
38. With respect to the allegations contained in Paragraph 38 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
39. With respect to the allegations contained in Paragraph 39 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
40. With respect to the allegations contained in Paragraph 40 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
41. With respect to the allegations contained in Paragraph 41 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
42. With respect to the allegations contained in Paragraph 42 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
43. With respect to the allegations contained in Paragraph 43 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
44. With respect to the allegations contained in Paragraph 44 of the Complaint, the Defendants deny the allegations contained in such Paragraph.
45. With respect to the allegations contained in Paragraph 45 of the Complaint, the Defendants deny having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in such Paragraph.
46. With respect to the allegations contained in Paragraph 46 of the Complaint, the Defendants deny having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in such Paragraph.

**AS AND FOR AN ANSWER TO “CAUSES OF ACTION – FIRST CAUSE OF  
ACTION: Hostile Work Environment Based on Race in Violation of Section 1981  
(Against J&M)”**

47. The Defendants repeat and reassert each and every one of the responses contained in the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

48. With respect to the allegations contained in Paragraph 48 of the Complaint, the Defendants state that such allegations consist of statements and/or conclusions of law to which no responsive pleading is required.

49. With respect to the allegations contained in Paragraph 49 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

50. With respect to the allegations contained in Paragraph 50 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

51. With respect to the allegations contained in Paragraph 51 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

52. With respect to the allegations contained in Paragraph 52 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

**AS AND FOR AN ANSWER TO “CAUSES OF ACTION – SECOND CAUSE OF  
ACTION: Unlawful Termination in Violation of Section 1981 (Against J&M)”**

53. The Defendants repeat and reassert each and every one of the responses contained in the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

54. With respect to the allegations contained in Paragraph 54 of the Complaint, the Defendants state that such allegations consist of statements and/or conclusions of law to which no responsive pleading is required.

55. With respect to the allegations contained in Paragraph 55 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

56. With respect to the allegations contained in Paragraph 56 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

57. With respect to the allegations contained in Paragraph 57 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

**AS AND FOR AN ANSWER TO “CAUSES OF ACTION – THIRD CAUSE OF  
ACTION: Hostile Work Environment in Violation of the NYCHRL  
(Against All Defendants)”**

58. The Defendants repeat and reassert each and every one of the responses contained in the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

59. With respect to the allegations contained in Paragraph 59 of the Complaint, the Defendants state that such allegations consist of statements and/or conclusions of law to which no responsive pleading is required.



60. With respect to the allegations contained in Paragraph 60 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

61. With respect to the allegations contained in Paragraph 61 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

62. With respect to the allegations contained in Paragraph 62 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

63. With respect to the allegations contained in Paragraph 63 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

**AS AND FOR AN ANSWER TO “CAUSES OF ACTION – FOURTH CAUSE OF**

**ACTION: *Quid Pro Quo* Sexual Harassment in Violation of the NYCHRL**

**(Against All Defendants)”**

64. The Defendants repeat and reassert each and every one of the responses contained in the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

65. With respect to the allegations contained in Paragraph 65 of the Complaint, the Defendants state that such allegations consist of statements and/or conclusions of law to which no responsive pleading is required.

66. With respect to the allegations contained in Paragraph 66 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

67. With respect to the allegations contained in Paragraph 67 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

68. With respect to the allegations contained in Paragraph 68 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

69. With respect to the allegations contained in Paragraph 69 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

**AS AND FOR AN ANSWER TO “CAUSES OF ACTION – FIFTH CAUSE OF  
ACTION: Unlawful Termination in Violation of the NYCHRL  
(Against All Defendants)”**

70. The Defendants repeat and reassert each and every one of the responses contained in the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

71. With respect to the allegations contained in Paragraph 71 of the Complaint, the Defendants state that such allegations consist of statements and/or conclusions of law to which no responsive pleading is required.

72. With respect to the allegations contained in Paragraph 72 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

73. With respect to the allegations contained in Paragraph 73 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

74. With respect to the allegations contained in Paragraph 74 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

75. With respect to the allegations contained in Paragraph 75 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

76. With respect to the allegations contained in Paragraph 76 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

**AS AND FOR AN ANSWER TO “CAUSES OF ACTION – SIXTH CAUSE OF**

**ACTION: Assault in Violation of the New York State Common Law**

**(Against All Defendants)”**

77. The Defendants repeat and reassert each and every one of the responses contained in the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

78. With respect to the allegations contained in Paragraph 78 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

79. With respect to the allegations contained in Paragraph 79 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

80. With respect to the allegations contained in Paragraph 80 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

81. With respect to the allegations contained in Paragraph 81 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

**AS AND FOR AN ANSWER TO “CAUSES OF ACTION – SEVENTH CAUSE OF  
ACTION: Battery in Violation of the New York State Common Law  
(Against All Defendants)”**

82. The Defendants repeat and reassert each and every one of the responses contained in the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

83. With respect to the allegations contained in Paragraph 83 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

84. With respect to the allegations contained in Paragraph 84 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

85. With respect to the allegations contained in Paragraph 85 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

**AS AND FOR AN ANSWER TO “CAUSES OF ACTION – EIGHTH CAUSE OF  
ACTION: False Imprisonment in Violation of the New York State Common Law  
(Against Defendant Fauci)”**

86. The Defendants repeat and reassert each and every one of the responses contained in the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

87. With respect to the allegations contained in Paragraph 87 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

88. With respect to the allegations contained in Paragraph 88 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

**AS AND FOR AN ANSWER TO “CAUSES OF ACTION – EIGHTH CAUSE OF**

**ACTION: Intentional Infliction of Emotional Distress in Violation of the New York**

**State Common Law (Against Defendant Fauci)”**

89. The Defendants repeat and reassert each and every one of the responses contained in the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

90. With respect to the allegations contained in Paragraph 90 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

91. With respect to the allegations contained in Paragraph 91 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

92. With respect to the allegations contained in Paragraph 92 of the Complaint, the Defendants deny the allegations contained in such Paragraph.

**AS AND FOR AN ANSWER TO  
PLAINTIFF’S REQUEST FOR RELIEF**

With respect to the allegations contained in Paragraphs (A) through (J) of the Complaint’s prayer for relief, the Defendants deny that the Plaintiff is entitled to any of the relief sought.

**AFFIRMATIVE AND OTHER DEFENSES**

The Defendants assert the following affirmative and other defenses without assuming any burden of production or proof that they would not otherwise have. The Defendants further assert that, to the extent that the Plaintiff's claims as alleged are vague or unclear, so as to render it difficult or impossible to identify and assert every possible affirmative or other defense, the Defendants hereby expressly reserve their rights to assert additional defenses should further proceedings in this action, including the progress of any discovery, reveal that such additional defenses would be applicable and appropriate.

#### **AS AND FOR A FIRST DEFENSE TO THE PLAINTIFF'S COMPLAINT**

The statements and allegations contained in the Plaintiff's Complaint may fail to state any valid cause(s) of action upon which relief can be granted as a matter of fact and/or law on behalf of the Plaintiff.

#### **AS AND FOR A SECOND DEFENSE TO THE PLAINTIFF'S COMPLAINT**

Subject to proof through discovery, some or all of the claims asserted by the Plaintiff may be barred in whole or in part by the doctrine of unclean hands.

#### **AS AND FOR A THIRD DEFENSE TO THE PLAINTIFF'S COMPLAINT**

The causes of action alleged in the Complaint may be barred, in whole or in part, by applicable statutes of limitation.

#### **RESERVATION OF RIGHTS TO ASSERT ADDITIONAL DEFENSES**

The Defendants state that they currently have insufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, defenses available. As such, the Defendants expressly reserve the right to assert additional defenses, and

to seek to amend this Answer to include any such additional defenses, in the event that discovery indicates that any such additional defenses would be appropriate.

WHEREFORE, the Defendants respectfully request that judgment be entered by this Court dismissing any claims in the Complaint that are deemed by the Court to be lacking in merit, with prejudice, and granting such further relief as may be just and proper.

Dated: Long Island City, New York  
July 7, 2017

STEPHEN D. HANS & ASSOCIATES, P.C.

By: \_\_\_\_\_/s/\_\_\_\_\_  
Stephen D. Hans (SH-0798)  
45-18 Court Square, Suite 403  
Long Island City, New York 11101  
Tel: 718.275.6700 x 204  
Fax: 718.275.6704  
Email: shans@hansassociates.com  
*Attorneys for the Defendants*